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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

AMIR AYARI,

Plaintiff,

v.

CREDIT ONE BANK,

Defendant.

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Civil Action No.: 5:15-cv-00663

JURY TRIAL DEMANDED

COMPLAINT

AMIR AYARI ("Plaintiff"), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against CREDIT ONE BANK ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendants conduct business in the State of Texas, and as such, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

5. Plaintiff is a natural person residing in San Antonio, Texas 78210.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation with its headquarters located at 585 Pilot Road, Las Vegas, Nevada 89119.

8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that he has had for over one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in or around late June 2015, Defendant called Plaintiff on his cellular telephone on a repetitive and continuous basis.

14. During the relevant period, Defendant called Plaintiff on his cellular telephone, on average, ten (10) times each day.

15. When contacting Plaintiff on his cellular telephone, Defendant used an automatic telephone dialing system, as well as, automatic and/or pre-recorded messages.

16. Defendant’s automated messages, when answered, would either be silent, or state; “We’re calling from Credit One Bank.”

17. Defendant’s telephone calls were not made for “emergency purposes.”

1 18. On occasions in which Plaintiff was able to get a live representative on the line,
2 it would request an unknown third party, at which point, Plaintiff would inform them that they
3 were contacting the wrong person and request them to stop immediately.
4

5 19. Despite the information relayed above, Defendant continued to contact Plaintiff
6 on his cellular number.

7 20. Plaintiff disputes having ever provided Defendant consent to call his cellular
8 telephone.
9

10 21. In the alternative, if Plaintiff gave consent to call, it was neither express or with
11 knowledge and/or consent was revoked.

12 22. Defendant's calls continued, however, on occasion being placed before 8:00
13 a.m. and after 9:00 p.m., as well as, on weekends.

14 23. Upon information and belief, defendant conducts business in a manner which
15 violates the telephone consumer protection act.
16

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18 **DEFENDANT VIOLATED THE**
19 **TELEPHONE CONSUMER PROTECTION ACT**

20 24. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
21 at length herein.

22 25. Defendant initiated multiple automated telephone calls to Plaintiff's cellular
23 telephone using a prerecorded voice.
24

25 26. Defendant initiated these automated calls to Plaintiff using an automatic
26 telephone dialing system.

27 27. Defendant's calls to Plaintiff were not made for emergency purposes.
28

1 28. Defendant's calls to Plaintiff, after late June 2015, were not made with
2 Plaintiff's prior express consent.

3 29. Defendant's acts as described above were done with malicious, intentional,
4 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with
5 the purpose of harassing Plaintiff.
6

7 30. The acts and/or omissions of Defendant were done unfairly, unlawfully,
8 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
9 defense, legal justification or legal excuse.
10

11 31. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
12 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
13 damages.
14

15 WHEREFORE, Plaintiff, AMIR AYARI, respectfully prays for a judgment as follows:
16

- 17 a. All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
18 b. Statutory damages of \$500.00 per violative telephone call pursuant to 47
19 U.S.C. §227(b)(3)(B);
20 c. Treble damages of \$1,500 per violative telephone call pursuant to 47
21 U.S.C. §227(b)(3);
22 d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3); and
23 e. Any other relief deemed appropriate by this Honorable Court.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, AMIR AYARI, demands a jury trial in this case.

Respectfully submitted,

Dated: August 7, 2015

By: /s/ Amy L. Bennecoff Ginsburg
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